Supreme Court, U.S.
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No. 06-

Supreme Court of the United States

Term October 2006

Roger W. Knight, petitioner

v.

State of Washington, Department of Social and Health Services, respondent

On Petition for Writ of Certiorari to the Supreme Court of Washington

PETITION FOR WRIT OF CERTIORARI TO THE SUPREM COURT OF WASHINGTON

ROGER W. KNIGHT, pro se
Post Office Box 3444
Seattle, Washington 98114
206-774-7889
rogerwknight@hotmail.com
Counsel for Petitioner

I. Questions Presented For Review

A. As payment or nonpayment of child support is demonstrably unrelated to most activities licensed, including operating a motor vehcile, does suspending such licence on the basis of nonpayment of child support violate the Fourteenth Amendment?

B. As RCW 74.20A.320(3) prohibits consideration of inability to comply with a support order, does it unconstitutionally punish support obligors unable to comply with their support orders without serving the claimed interest of government?

C. As RCW 74.20A.320(3) prohibits consideration of inability to comply with a support order, is it a bill of attainder against parties unable to comply with such support orders prohibited by Article I Section 10 clause 1 of the Constitution?

D. Are any attempts to coerce, by license suspension, a non-custodial parent's consent to a "repayment agreement" when he possesses wealth insufficient to comply with the support order without employment, and the state statute, RCW 74.20A.320, that provides for such coercion, declared null and void by 42 U.S.C. §1994?

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IV. Decision Below

The denial of review below is noted at 158 Wash. 2d. 1015 and is based on *Amunrud v. Board of Appeals*, (2006) 158 Wash. 2d. 208, 143 P. 3d. 571. The unpublished state Court of Appeals decision is noted at 126 Wash. App. 1033.

V. Statement of Grounds For Jurisdiction of this Court

The Supreme Court of Washington entered its denial of review on December 5, 2006. This Petition for Writ of Certiorari is presented within 90 days of December 5, 2006.

This Court has jurisdiction to review the denial of review provided by 28 U.S.C. §1257(a).

VI. Laws Involved in this Case

Provisions of the United States Constitution

Article I Section 10 clause 1

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

Thirteenth Article of Amendment

Section 1. Neither slavery nor involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted, shall exist in the United States, or anyplace subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

Fourteenth Article of Amendment

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are

citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Laws of the United States

42 U.S.C. §1994

The holding of any person to service or labor under the system known as peonage is abolished and forever prohibited in any Territory or State of the United States; and all acts, laws, resolutions, orders, regulations, or usages of any Territory or State, which have heretofore established, maintained, or enforced, or by virtue of which any attempt shall hereafter be made to establish, maintain, or enforce, directly or indirectly, the voluntary or involuntary service or labor of any persons as peons, in liquidation of any debt or obligation, or otherwise, are declared null and void.

Revised Code of Washington

RCW 74.20A.320

(1) The department may serve upon a responsible parent a notice informing the responsible parent of the department's intent to submit the parent's name to the department of licensing and any appropriate licensing entity as a licensee who is not in compliance with a child support order. The department shall attach a copy of the responsible parent's child support order to the notice. Service of the notice must be by certified mail, return receipt requested. If service by certified mail is not successful, service shall be by personal service.

(2) The notice of noncompliance must include the address and telephone number of the department's division of child support office that issues the notice and must inform the responsible parent that:

(a) The parent may request an adjudicative proceeding to contest the issue of compliance with the child support order. The only issues that may be considered at the adjudicative proceeding are whether the parent is required to pay child support under a child support order and whether the parent is in compliance with that order;

(b) A request for an adjudicative proceeding shall be in writing and must be received by the department within twenty days of the date of service of the notice;

(c) If the parent requests an adjudicative proceeding within twenty days of service, the department will stay action to certify the parent to the department of licensing and any licensing entity for noncompliance with a child support order pending entry of a written decision after the adjudicative proceeding;

(d) If the parent does not request an adjudicative proceeding within twenty days of service and remains in noncompliance with a child support order, the department will certify the parent's name to the department of licensing and any appropriate licensing entity for noncompliance with a child support order;

(e) The department will stay action to certify the parent to the department of licensing and any licensing entity for noncompliance if the parent agrees to make timely payments of current support and agrees to a reasonable payment schedule for payment of the arrears. It is the parent's responsibility to contact in person or by mail the department's division of child support office indicated on the notice within twenty days of service of the notice to arrange for a payment schedule. The department may stay certification for up to

thirty days after contact from a parent to arrange for a payment schedule;

(f) If the department certifies the responsible parent to the department of licensing and a licensing entity for noncompliance with a child support order, the licensing entity will suspend or not renew the parent's license and the department of licensing will suspend or not renew any driver's license that the parent holds until the parent provides the department of licensing and the licensing entity with a release from the department stating that the responsible parent is in compliance with the child support order;

(g) If the department certifies the responsible parent as a person who is in noncompliance with a child support order, the department of fish and wildlife will suspend the fishing license, hunting license, commercial fishing license, or any other license issued under chapters 77.32, 77.28, [75.28], and 75.25 RCW that the responsible parent may possess. Notice from the department of licensing that a responsible parent's driver's license has been suspended shall serve as notice of the suspension of a license issued under chapters 77.32 and 75.25 RCW;

(h) Suspension of a license will affect insurability if the responsible parent's insurance policy excludes coverage for acts occurring after the suspension of a license;

(i) If after receiving the notice of noncompliance with a child support order, the responsible parent files a motion to modify support with the court or requests the department to amend a support obligation established by an administrative decision, or if a motion for modification of a court or administrative order for child support is pending, the department or the court may stay action to certify the parent to the department of licensing and any licensing entity for noncompliance with a child support

order. A stay shall not exceed six months unless the department finds good cause. The responsible parent has the obligation to notify the department that a modification proceeding is pending and provide a copy of the motion or request for modification; and

(j) If the responsible parent subsequently becomes in compliance with the child support order, the department will promptly provide the parent with a release stating that the parent is in compliance with the order, and the parent may request that the licensing entity or the department of licensing reinstate the suspended license.

(3) A responsible parent may request an adjudicative proceeding upon service of the notice described in subsection (1) of this section. The request for an adjudicative proceeding must be received by the department within twenty days of service. The request must be in writing and indicate the current mailing address and daytime phone number, if available, of the responsible parent. The proceedings under this subsection shall be conducted in accordance with the requirements of chapter 34.05 RCW. The issues that may be considered at the adjudicative proceeding are limited to whether:

(a) The person named as the responsible parent is the responsible parent;

(b) The responsible parent is required to pay child support under a child support order; and

(c) The responsible parent is in compliance with the order.

(4) The decision resulting from the adjudicative proceeding must be in writing and inform the responsible parent of his or her rights to review. The parent's copy of the decision may be sent by regular mail to the parent's most recent address of record.

(5) If a responsible parent contacts the department's

division of child support office indicated on the notice of noncompliance within twenty days of service of the notice and requests arrangement of a payment schedule, the department shall stay the certification of noncompliance during negotiation of the schedule for payment of arrears. In no event shall the stay continue for more than thirty days from the date of contact by the parent. The department shall establish a schedule for payment of arrears that is fair and reasonable, and that considers the financial situation of the responsible parent and the needs of all children who rely on the responsible parent for support. At the end of the thirty days, if no payment schedule has been agreed to in writing and the department has acted in good faith, the department shall proceed with certification of noncompliance.

(6) If a responsible parent timely requests an adjudicative proceeding pursuant to subsection (4) of this section, the department may not certify the name of the parent to the department of licensing or a licensing entity for noncompliance with a child support order unless the adjudicative proceeding results in a finding that the responsible parent is not in compliance with the order.

(7) The department may certify to the department of licensing and any appropriate licensing entity the name of a responsible parent who is not in compliance with a child support order or a residential or visitation order if:

(a) The responsible parent does not timely request an adjudicative proceeding upon service of a notice issued under subsection (1) of this section and is not in compliance with a child support order twenty-one days after service of the notice;

(b) An adjudicative proceeding results in a decision that the responsible parent is not in compliance with a child support order;

(c) The court enters a judgment on a petition

for judicial review that finds the responsible parent is not in compliance with a child support order;

(d) The department and the responsible parent have been unable to agree on a fair and reasonable schedule of payment of the arrears;

(e) The responsible parent fails to comply with a payment schedule established pursuant to subsection (5) of this section; or

The department shall send by regular mail a copy of any certification of noncompliance filed with the department of licensing or a licensing entity to the responsible parent at the responsible parent's most recent address of record.

(8) The department of licensing and a licensing entity shall, without undue delay, notify a responsible parent certified by the department under subsection (7) of this section that the parent's driver's license or other license has been suspended because the parent's name has been certified by the department as a responsible parent who is not in compliance with a child support order or a residential or visitation order.

(9) When a responsible parent who is served notice under subsection (1) of this section subsequently complies with the child support order, or when the department receives a court order under section 886 of this act stating that the parent is in compliance with a residential or visitation order, the department shall promptly provide the parent with a release stating that the responsible parent is in compliance with the order. A copy of the release shall be transmitted by the department to the appropriate licensing entities.

(10) The department may adopt rules to implement and enforce the requirements of this section. The department shall deliver a copy of rules adopted to implement and enforce this section to the legislature by June 30, 1998.

(11) Nothing in this section prohibits a responsible

parent from filing a motion to modify support with the court or from requesting the department to amend a support obligation established by an administrative decision. If there is a reasonable likelihood that a pending motion or request will significantly change the amount of the child support obligation, the department or the court may stay action to certify the responsible parent to the department of licensing and any licensing entity for noncompliance with a child support order. A stay shall not exceed six months unless the department finds good cause to extend the stay. The responsible parent has the obligation to notify the department that a modification proceeding is pending and provide a copy of the motion or request for modification.

(12) The department of licensing and a licensing entity may renew, reinstate, or otherwise extend a license in accordance with the licensing entity's or the department of licensing's rules after the licensing entity or the department of licensing receives a copy of the release specified in subsection (9) of this section. The department of licensing and a licensing entity may waive any applicable requirement for reissuance, renewal, or other extension if it determines that the imposition of that requirement places an undue burden on the person and that waiver of the requirement is consistent with the public interest.

(13) The procedures in chapter 58, Laws of 1997, constitute the exclusive administrative remedy for contesting the establishment of noncompliance with a child support order and suspension of a license under this section, and satisfy the requirements of RCW 34.05.422.

VII. Statement of the Case

On March 11, 2003, the Department of Social and Health Services (DSHS) served upon the petitioner the Notice of Noncompliance and Intent to Suspend Licenses.

On March 12, 2003 Mr. Knight served his Request for

Adjudicative Hearing, RCW 74.20A.320 Request to Restore Driver's License or Notice that it has Been Restored.

On April 16, 2003 the parties appeared before Administrative Law Judge Gail G. Maurer of the Office of Administrative Hearings.

On May 6, 2003, Administrative Law Judge Gail G. Maurer entered the Final Order.

On May 21, 2003, the Office of Administrative Hearings re-mailed the Final Order due to problems with the United States Postal Service delivering mail to Mr. Knight.

On June 2, 2003, Mr. Knight filed his Petition for Judicial Review of Agency Decisions, Chapter 34.05.

On March 19, 2004 the superior court entered it Order Affirming Administrative Decision.

On April 1, 2004, Mr. Knight filed his Notice of Appeal to the Court of Appeals, Division One.

On March 21, 2005, the Court of Appeals entered its findings in unpublished decision.

On April 12, 2005, Mr. Knight filed his Petition for Review with the Supreme Court of Washington.

On January 10, 2006, the Supreme Court of Washington deferred decision on the Petition for Review pending its review of *Amunrud v. Board of Appeals*, No. 76590-1.

On September 21, 2006 the Supreme Court of Washington entered its opinion and dissent in *Amunrud v. Board of Appeals*, (2006) 158 Wash. 2d. 208, 143 P. 3d. 571.

On December 5, 2006, the Supreme Court of Washington denied the Petition for Review.

VIII. Argument for Allowance of the Writ

A. Introduction: Res Judicata and Collateral Estoppel Do Not Bar these Claims

This case arises from an administrative suspension of

a driver's license for nonpayment of child support. The original suspension actually occurred in September 2001. The Washington Department of Social and Health Services (DSHS) through its Division of Child Support (DCS) notified the state's Department of Licensing on September 11, 2001 and the license was suspended on September 16, 2001.

As a result of this earlier license suspension, Mr. Knight was charged five times for the crime of driving while license suspended (DWLS), and all five charges were dismissed without any compromise of Mr. Knight's rights.[1]

During this process, Mr. Knight further defended himself by filing two civil actions in the United States District Court for the Western District of Washington: *Knight v. City of Mercer Island*, No. C02-879L and *Knight v. Serpas*, No. C02-1641C. At No. C02-879L Document No. 65, and at No. C02-1641C Document No. 16 the district court found that claims were barred by *Rooker-Feldman*[2] doctrine and

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[1] *City of Seattle v. Knight*, Seattle Municipal Court No. 415256, dismissed with prejudice as car was impounded under tow ordinance since repealed. *City of Mercer Island v. Knight*, King County District Court, Bellevue Division Nos. MIC 84199 and MIC 84268, joindered, convictions reversed on appeal, King County Superior Court No. 02-1-01137-0 SEA, dismissed with prejudice on remand. *State v. Knight*, King County District Court, South Division No. CQ54646KC, dismissed with prejudice. *State v. Knight*, King County District Court, West Division, No. C438381, dismissed without prejudice after one year statute of limitations, RCW 9A.04.080(1)(j), expired.

[2] *Rooker v. Fidelity Trust Co.*, (1923) 263 U.S. 413, 68 L. Ed. 362, 44 S. Ct. 149 and *District of Columbia Court of Appeals v. Feldman*, (1983) 460 U.S. 462, 75 L. Ed. 2d. 206, 103 S. Ct. 1303.

that federal court must abstain under *Younger*[3] doctrine. This can easily be verified by anyone with a PACER account.

The Ninth Circuit affirmed both of these decisions on other grounds in unpublished memoranda, but did not overrule the district court's findings as to *Rooker-Feldman* and *Younger* abstention: *Knight v. Serpas*, Ninth Circuit No. 03-35016 at 65 F. Appx. 830 and *Knight v. Mercer Island* Ninth Circuit No. 03-35116 at 70 F. Appx. 413.

The lower Washington courts below herein found that these two federal cases precluded subsequent Washington court consideration. King County Superior Court at App. pp. 10-11 and Washington Court of Appeals at App. pp. 6-8. As the appellate court states on App. p. 6, Mr. Knight argued that under *Shuman v. Dept. of Licensing*, (2001) 108 Wash. App. 673, 681-682, 32 P. 3d. 1011 which cited *Thompson v. Department of Licensing*, (1999), 138 Wash. 2d. 783, 790, 982 P. 2d. 601, the burden of proof is with the party asserting preclusion. The State presented evidence of the unpublished Ninth Circuit decisions but did not present the Western District of Washington decisions in the face of Mr. Knight's assertion that the federal courts found the claims barred by *Rooker-Feldman* and that they must abstain under *Younger*.

It is obvious that pursuant to *Elk Grove Unified School Dist. v. Newdow*, (2004) 542 U.S. 1, 159 L. Ed. 2d. 98, 124 S. Ct. 2301 and *Rumsfeld v. Padilla*, (2004) 542 U.S. 426, 124 S. Ct. 2711, 2717-2727, 159 L. Ed. 2d. 513 that where a federal court finds itself to lack jurisdiction or that it must abstain, then no other finding by such federal court can have preclusive effect. *Padilla* vacated all decisions resulting from the petition and remanded for entry of an order of dismissal without prejudice, at 124 S. Ct. 2727. This is a specific finding prohibiting preclusion as to the merits of Jose

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[3] *Younger v. Harris*, (1971) 401 U.S. 37, 46-54, 27 L. Ed. 2d. 669, 91 S. Ct. 746

Padilla's claims for a writ of habeas corpus.

The Supreme Court of Washington deferred Mr. Knight's case pending the *Amunrud* case, tacitly finding that if Mr. Amunrud was entitled to relief, then Mr. Knight was not precluded by the federal court actions. App. p. 2.

In their published opinions, the Washington courts find that res judicata and collateral estoppel are equitable doctrines with equitable exceptions. For collateral estoppel *Shuman* at 108 Wash. App. 677-678 found:

> A party seeking to invoke the doctrine of collateral estoppel must prove: '(1) the issue decided in the prior adjudication is identical with the one presented in the second action; (2) the prior adjudication must have ended in a final judgment on the merits; (3) the party against whom the plea is asserted was a party or in privity with the party to the prior adjudication; and (4) application of the doctrine does not work an injustice.' *Thompson v. Dep't of Licensing*, 138 Wn.2d 783, 790, 982 P.2d 601 (1999).

And for res judicata *Hisle v. Todd Pacific Shipyards Corp.*, (2002) 113 Wash. App. 401, 410-411, 54 P. 3d. 687, 692 found:

> In considering whether causes of action are the same for purposes of res judicata, courts consider (1) whether rights or interests established in the prior judgment would be destroyed or impaired by prosecution of the second action; (2) whether substantially the same evidence is presented in the two actions; (3) whether the two suits involve infringement of the same right; and (4) whether the two suits arise out of the same transactional nucleus of facts. *Hayes v. City of Seattle*, 131 Wn. 2d 706, 713, 934 P.2d 1179, 943 P. 2d 265 (1997);

Finally, Washington courts find that important issues

of law are not precluded. *In re Personal Restraint of Metcalf*, (1998) 92 Wash. App. 165, 174-6, 963 P. 2d. 911 found:

> Metcalf concedes that the analogous state constitutional provisions upon which he relies receive an interpretation identical to the analogous federal ones. Several of Metcalf's constitutional issues are thus identical to issues resolved in *Wright*.
>
> The adjudication in *Wright* ended in a final judgment on the merits, and as a member of the certified class, Metcalf was a party to the prior litigation. Collateral estoppel thus bars Metcalf's federal (and analogous state) constitutional claims unless application of the doctrine would work an injustice.
>
> We reject Metcalf's claim that the federal magistrate and the district judge did not give full consideration to the inmates' claims. Metcalf relies on *State v. Frederick*, 100 Wn.2d 550, 559, 674 P.2d 136 (1983), wherein our Supreme Court declined to apply collateral estoppel where the prior adjudication failed to fully consider the evidence and apply the appropriate law. In that case, the asserted "prior adjudication" was a single-sentence order refusing to consider a petitioner's personal restraint petition, concluding that it had "no basis either in fact or law and appear[ed] frivolous on its face." The Supreme Court proceeded to consider the merits. *Id.* at 559.
>
> This case differs greatly from *Frederick*, because here the federal court did not issue a perfunctory order. To the contrary, the claims were carefully considered and discussed.

Wright is Wright v. Riveland, W.D. Wash. No. C95-5381 FDB. Even so, *Metcalf* concluded at 92 Wash. App. 176:

> Metcalf is correct that Washington follows the rule

> that "an important issue of law should not be foreclosed by collateral estoppel." *Southcenter Joint Venture v. National Democratic Policy Comm.*, 113 Wn.2d 413, 418-19, 780 P.2d 1282 (1989) (citing *Kennedy v. City of Seattle*, 94 Wn.2d 376, 379, 617 P.2d 713 (1980)). There can be little question as to the importance of the issues raised here, given the large numbers of inmates affected and the gravity of the challenges asserted. We therefore elect to consider the merits of Metcalf's claims.

Kennedy v. City of Seattle, (1980) 94 Wash. 2d. 376, 379, found:

> There are a number of requirements for the application of the doctrine of collateral estoppel. *See Beagles v. Seattle First Nat'l Bank*, 25 Wn. App. 925, 610 P.2d 962 (1980). We need consider only one: that application of the doctrine must not work an injustice. *Henderson v. Bardahl Int'l Corp.*, 72 Wn.2d 109, 119, 431 P.2d 961 (1967). It would be manifestly unjust not only to litigants Kennedy and McGuire but to other houseboat and moorage owners for the constitutionality of the houseboat ordinance to be determined by a municipal court ruling unappealed by the City. Furthermore, the relitigation of an important public question of law such as the validity of the houseboat ordinance should not be foreclosed by collateral estoppel. *Los Angeles v. San Fernando*, 14 Cal. 3d 199, 230, 537 P.2d 1250, 123 Cal. Rptr. 1 (1975).

Likewise, it would be manifestly unjust to Mr. Knight and to other noncustodial parents subject to license suspension for nonpayment of child support for the validity of such suspension to not be considered. Particularly in light of Mr. Amunrud's decision to not petition this Court for certiorari

from a split decision by the Supreme Court of Washington where three dissenting justices found that to suspend a commercial driver's license for of child support, a matter unrelated to the activity licensed, is unconstutional.

B. License Suspension for Unrelated Matters

In *Amunrud*, Justice Richard Sanders wrote the dissent, 158 Wash. 2d. 231-246, finding that to suspend a commercial driver's license for the unrelated matter of child support, denies due process in violation of the Fourteenth Amendment. This entire dissent speaks for itself. The majority's opinion in *Amunrud* is in conflict with a number of decisions of this Court. Justice Sanders wrote, *Id.* 235-236:

> Professional and motor vehicle licenses create both property and liberty interests requiring due process protection. *Barry v. Barchi*, 443 U.S. 55, 99 S. Ct. 2642, 61 L. Ed. 2d 365 (1979); *Bell v. Burson*, 402 U.S. 535, 91 S. Ct. 1586, 29 L. Ed. 2d 90 (1971).

And at *Id.* 241-242:

> Professional license revocation also requires a rational relationship between the revocation of the license and the applicant's fitness or capacity to conduct that particular profession. For example, in *Schware v. Board of Bar Examiners*, 353 U.S. 232, 77 S. Ct. 752, 1 L. Ed. 2d 796 (1957) the board of bar examiners refused to permit the petitioner to take the bar examination on the ground that he had not shown "good moral character" because of his previous membership in the Communist Party. The Supreme Court held: "A State can require high standards of qualification, such as good moral character or proficiency in its law, before it admits an applicant to the bar, but any qualification must have a rational connection with the applicant's fitness or capacity to practice law." *Id.* at 239. See also *In re Revocation of*

License to Practice Dentistry of Flynn, 52 Wn.2d 589, 594, 328 P.2d 150 (1958) (holding that there must be a rational connection between the acts giving rise to the license revocation and Flynn's fitness and capacity to practice dentistry to constitute a valid reason for the revocation).

Likewise *City of Seattle v. Bittner*, (1973) 81 Wash. 2d. 747, 754, 654, 505 P. 2d. 126 found in licensing movie theater operators:

> But even where the character of an applicant is subject to evaluation by the licensing officer, the matters taken into account must be relevant to the activity licensed.

There is no relevancy between compliance or noncompliance with a support order and the activity of driving an automobile, and with other licensed activities such as practicing medicine, hunting Roosevelt elk, drilling water wells, or selling liquor by the drink.

This Court should grant a writ of certiorari to resolve the conflict between the Supreme Court of Washington's findings in *Amunrud* and this Court's findings in *Barry v. Barchi*; *Bell v. Burson*; and *Schware*.

C. *Zablocki v. Redhail*, License Suspension Without Defense of Inability to Comply With Support Order

RCW 74.20A.320(3) prohibits consideration of ability to comply with a support order. If the parent is unable to comply with the support order, the suspension is automatic and the parent has no defense. It is therefore a punishment by legislative fiat, without requirement or availability of any **MEANINGFUL** administrative or judicial process, of all those unable to comply with their support orders.

RCW 74.20A.320(9) provides that license may restored only upon compliance with the support order.

Therefore, until Mr. Knight comes up with the $50,000, App. p. 5, he is **PERMANENTLY** barred from operating a motor vehicle or engaging in any other activity that requires a license issued by the State of Washington.

RCW 26.09.170(1) prohibits any court order forgiving or otherwise reducing pre-existing child support debt, regardless of any reason or circumstance that a court may find warrants such forgiveness or reduction.

Zablocki v. Redhail, (1978) 434 U.S. 374, 387, 54 L. Ed. 2d. 618, 98 S. Ct. 673 found:

> Under the challenged statute, no Wisconsin resident in the affected class may marry in Wisconsin or elsewhere without a court order, and marriages contracted in violation of the statute are both void and punishable as criminal offenses. Some of those in the affected class, like appellee, **will never be able to obtain the necessary court order, because they either lack the financial means to meet their support obligations** or cannot prove that their children will not become public charges. These persons are absolutely prevented from getting married.

Emphasis added. A noncustodial parent whose license is suspended and is unable to comply with the support order, is absolutely prevented from acquiring restoration of the license. The license suspension is therefore **PERMANENT**.

Zablocki, at 434 U.S. 389 found:

> First, with respect to **individuals who are unable to meet the statutory requirements**, the statute merely prevents the applicant from getting married, **without delivering any money** at all into the hands of the applicant's prior children.

Therefore serving no legitimate interest of government and thus depriving persons of liberty and property without due

process of law required by the Fourteenth Amendment. A bare desire to harm a politically unpopular group is not a legitimate interest of government. Justice O'Connor's concurrence in *Lawrence v. Texas*, (2003) 539 U.S. 558, 156 L. Ed. 2d. 508, 123 S. Ct. 2472, 2485 citing or quoting *Department of Agriculture v. Moreno*, (1973) 413 U.S. 528, 534, 37 L. Ed. 2d. 782, 93 S. Ct. 2821; *City of Cleburne v. Cleburne Living Center, Inc.*, (1985) 473 U.S. 432, 446-447, 87 L. Ed. 2d. 313, 105 S. Ct. 3249; and *Romer v. Evans*, (1996) 517 U.S. 620, 632, 134 L. Ed. 2d. 855, 116 S. Ct. 1620.

D. Bill of Attainder, License Suspension Without Defense of Inability to Comply With Support Order

RCW 74.20A.320 is a bill of attainder prohibited to the states by Article I Section 10 clause 1 of the Constitution. Particularly where directed against those unable to comply with support orders pre-existing 1997, as in the case of Mr. Knight, when Laws of Washington 1997 chapter 58 was passed. Prior to this Act, there was no provision or practice in Washington law for suspending licenses on the basis of child support. Mere fact that noncompliance continued after 1997 does not render the Act any less of a bill of attainder. *United States v. Brown*, (1965) 381 U.S. 437, 14 L. Ed. 2d. 484, 85 S. Ct. 1707 stuck down as a bill of attainder an Act of Congress affecting both members of the Communist Party who continued their membership and former members who can never stop being former members except by rejoining.

E. Attempt to Coerce Employment to Pay Child Support With Threat of License Suspension is Declared Null and Void by the Antipeonage Act, 42 U.S.C. §1994.

Negonsott v. Samuels, (1993) 507 U.S. 99, 104, 122

L. Ed. 2d. 457, 113 S. Ct. 1119, found:

> "Our task is to give effect to the will of Congress, and where its will has been expressed in reasonably plain terms, that language must ordinarily be regarded as conclusive."

quoting *Griffin v. Oceanic Contractors, Inc.*, (1982) 458 U.S. 564, 570, 73 L. Ed. 2d. 973, 102 S. Ct. 3245. Also, *Consumer Product Safety Commission v. GTE Sylvania*, (1980) 447 U.S. 102, 108, 64 L. Ed. 2d. 766, 100 S. Ct. 205; *Hartford Underwriters Ins. Co. v. Union Planters Bank, NA*, (2000) 530 U.S. 1, 147 L. Ed. 2d. 1, 120 S. Ct. 1942, 1947; *United States v. Sun-Diamond Growers*, (1999) 526 U.S. 398, 407, 143 L. Ed. 2d. 576, 119 S. Ct. 1402; and *Harris Trust & Savings Bank v. Salomon Smith Barney, Inc.*, (2000) 530 U.S. 238, 147 L. Ed. 2d. 187, 120 S. Ct. 2180, 2191. Congress "says in a statute what it means and means in a statute what it says there," *Connecticut Nat. Bank v. Germain*, (1992) 503 U.S. 249, 254, 112 S. Ct. 1146, 117 L. Ed. 2d. 391.

The Antipeonage Act, 42 U.S.C. §1994, authorized by Section 2 of the Thirteenth Amendment,[4] targets state court orders with the language "acts, laws, resolutions, **ORDERS**, regulations, or usages". State court orders are declared null and void, if such orders establish, maintain, or enforce the service or labor of any person as a peon in liquidation of a debt or obligation. "To suggest otherwise . . . 'is to reject the plain meaning of language'", *Jones v. Alfred H. Mayer, Co.*, (1968) 392 U.S. 413, 419, 20 L. Ed. 2d. 1189, 88 S. Ct. 2186 quoting *Hurd v. Hodge*, (1948) 334 U.S. 24, 34, 92 L. Ed. 1187, 68 S. Ct. 847.

RCW 74.20A.320(5) clearly states that the DSHS will stay suspension of the licenses only upon the parent entering

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[4] *Civil Rights Cases*, (1883) 109 U.S. 3, 20-23, 27 L. Ed. 835, 3 S. Ct. 18.

into a "repayment" agreement. Mr. Knight owes more than $50,000, App. p. 5. If he does not have that amount in his possession, he would have to obtain employment or agree to obtain employment in order to enter into such an agreement without committing the crime of fraud, RCW 9.45.100.

If Mr. Knight is unable to obtain employment with a salary or hourly wage rate sufficient to allow him to comply with such a repayment agreement, 42 U.S.C. §1994 still applies because it is the "attempt" that is declared null and void, whether successful or not. *United States v. Gaskin*, (1944) 320 U.S. 527, 527-530, 88 L. Ed. 287, 64 S. Ct. 318.

United States v. Reynolds, (1914) 235 U.S. 133, 146, 59 L. Ed. 162, 35 S. Ct. 86 found:

> The surety has paid the state and the service is rendered to reimburse him. That is the real substance of the transaction. The terms of that contract are agreed upon by the contracting parties, as the result of their own negotiations. The statute of the state does not prescribe them. It leaves the making of the contract to the parties concerned, and this fact is not changed because of the requirement that the judge shall approve the contract.

Emphasis added. *Peonage Cases*, (D.C. Ala. 1903) 123 F. 671, 674, found:

> If the peon wished to change the masters or service, he could find a new employer who would advance enough to pay the peon's debts to his then master, and the peon would then become bound in the new employer's service.

Same, *Jaremillo v. Romero*, (1857) 1 N.M. (Gildersleeve) 190, 194, and:

> If the servant does not wish to continue in service for any cause, such as the ill-treatment of the master, and receiving better pay from another;

Id., at 199, quoting New Mexico Territory's Master and Servant Act of 1851. *Jaremillo* described New Mexico's peonage system as understood by those who practiced it. This system is referenced by the original Antipeonage Act of March 2, 1867, at 14 STAT 546.

It is not fatal to a claim of peonage that a party under threat of legal process to pay amounts greater than he possesses, particularly in the case of a monthly obligation imposed based upon his income or imputed income, that he may undertake any profession or job of his choosing.

As a part of a continuum of coercive and extortionate measures, including contempt proceedings, arrest and imprisonment, attempts by license suspension under RCW 74.20A.320 to coerce employment in liquidation of the debt or obligation is declared null and void by 42 U.S.C. 1994.

By the rules of statutory construction set forth herein above, the phrase "debt or obligation, or otherwise" clearly includes child support, as the obligation was understood to exist prior to and during the winter of 1866-67, Congress made a deliberate decision to not exclude it from the Peonage Bill it passed.

Such deliberate decision should be respected.

IX. Conclusion

For the reasons stated herein, this Petition for Writ of Certiorari should be granted.

Respectfully submitted,
ROGER W. KNIGHT, pro se
P.O. Box 3444
Seattle, Washington 98114
206-774-7889
rogerwknight@hotmail.com

THE SUPREME COURT OF WASHINGTON

ROGER W. KNIGHT, Petitioner, v. STATE OF WASHINGTON and DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Respondent.	)	No. 77063-8 ORDER C/A NO. 54129-3-I

Department I of the Court, composed of Chief Justice Alexander and Justices C. Johnson, Sanders, Chambers, and Fairhurst, at its December 5, 2006, Motion Calendar, considered whether review should be granted pursuant to RAP 13.4(b), and unanimously agreed that the following order be entered.

IT IS ORDERED:

The Petition for Review is denied.

DATED at Olympia, Washington this 5th day of December, 2006.

For the Court

Gerry L. Alexander (signature)
CHIEF JUSTICE

THE SUPREME COURT OF WASHINGTON

ROGER W. KNIGHT, Petitioner, v. STATE OF WASHINGTON and DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Respondent.	)	No. 77063-8 ORDER C/A NO. 54129-3-I

Department I of the Court, composed of Chief Justice Alexander and Justices C. Johnson, Sanders, Chambers, and Fairhurst, at its January 10, 2006, Motion Calendar, considered whether review should be granted pursuant to RAP 13.4(b), and unanimously agreed that the following order be entered.

IT IS ORDERED:

The Petition for Review is deferred pending Supreme Court No. 76590-1, *Amunrud v. DSHS*.

DATED at Olympia, Washington this 10th day of January, 2006.

For the Court

Gerry L. Alexander (signature)
CHIEF JUSTICE

DO NOT CITE. SEE RAP 10.4(h).

Court of Appeals Division I
State of Washington

Opinion Information Sheet

Docket Number: 54129-3-I
Title of Case: ROGER KNIGHT, Appellant VS STATE OF WASH, DEPT SOCIAL/HEALTH SER, Respondent
File Date: 03/21/2005

SOURCE OF APPEAL

Appeal from Superior Court of King County
Docket No: 03-2-27325-2
Judgment or order under review
Date filed: 03/19/2004
Judge signing: Hon. Richard a Jones

JUDGES

Authored by Faye Kennedy
Concurring: Marlin Appelwick
Ronald Cox

COUNSEL OF RECORD

Counsel for Appellant(s)
Roger W Knight (Appearing Pro Se)
P.O.BOX 3444
Seattle, WA 98114

Counsel for Respondent(s)
Lianne Schain Malloy
Attorney at Law
670 Woodland Sq Loop SE
PO Box 40124
Olympia, WA 98504-0124

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

ROGER W. KNIGHT, Appellant,	)	NO. 54129-3-I
	)	DIVISION ONE
v.	)	
STATE OF WASHINGTON, and DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Respondent.	)	UNPUBLISHED OPINION

FILED: March 21, 2005

KENNEDY, J. Roger Knight appeals the superior court order affirming a decision of the Office of Administrative Hearings upholding the suspension of his driver's license for failure to comply with a child support order. Because each of his constitutional claims have been addressed on the merits by other courts, and because the statute at issue here provides procedural due process, unlike other statutes recently held to be unconstitutional in *City of Redmond v. Moore*, 151 Wn.2d 664, 91 P.3d 875 (2004), we affirm.

FACTS

A dissolution decree entered in 1991 requires Roger Knight to pay $851.76 per month in child support through the

Washington State Support Registry. Following his accumulation of past-due child support debt of over $50,000, the Department of Social and Health Services (DSHS) Division of Child Support (DCS) notified Knight of his noncompliance and the resulting suspension of his driver's license under RCW 74.20A. An administrative law judge heard his challenge to the suspension and entered a final order concluding that Knight had failed to comply with the child support order and upholding the license suspension. The ruling was based on findings that the child support order had not been modified and Knight had accumulated at least six months in arrearages. Recognizing that Knight did not dispute that the license was properly suspended under state law, the superior court affirmed, holding that Knight's constitutional claims were barred under collateral estoppel and res judicata, and that if it were to reach the merits, Knight's claims would still fail. Knight appeals.

ANALYSIS

Judicial review of agency orders in adjudicative proceedings is governed by RCW 34.05.570(3), which provides in pertinent part:

The court shall grant relief from an agency order in an adjudicative proceeding only if it determines that: . . .

(a) The order, or the statute or rule on which the order is based, is in violation of constitutional provisions on its face or as applied;

(b) The order is outside the statutory authority or jurisdiction of the agency conferred by any provision of law;

(c) The agency has engaged in unlawful procedure or decision-making process, or has failed to follow a prescribed procedure;

(d) The agency has erroneously interpreted or applied the law;

(e) The order is not supported by evidence that is substantial when viewed in light of the whole record before the court, which includes the agency record for judicial review, supplemented by any additional evidence received by the court under this chapter;

(f) The agency has not decided all issues requiring resolution by the agency;

. . . . {or}

(i) The order is arbitrary or capricious.

The appellate court applies these standards 'directly to the record before the agency, sitting in the same position as the superior court.' *Burnham v. Dep't of Soc. & Health Serv.*, 115 Wn. App. 435, 438, 63 P.3d 816, review denied, 150 Wn.2d 1013 (2003). Although we may substitute our judgment for that of an administrative agency on questions of law, we will accord substantial weight to the agency's view of the law it administers. *St. Francis Extended Care v. Dep't of Soc. & Health Serv.*, 115 Wn.2d 690, 692, 801 P.2d 212 (1990). Unchallenged findings of fact are verities on appeal. Id. at 695. Additionally, 'The burden of demonstrating the invalidity of agency action is on the party asserting invalidity{.}' RCW 34.05.570(1)(a).

Knight does not challenge the administrative hearing officer's findings of fact and does not dispute that he failed to pay child support. Relying on *Shuman v. Dep't of Licensing*, 108 Wn. App. 673, 681-82, 32 P.2d 1011 (2001), Knight first contends that the State failed to meet its burden of proof in asserting the preclusive effect of unpublished opinions in his prior federal cases by failing to submit the entire record, which would demonstrate that the federal courts lacked jurisdiction to decide or were required to abstain from deciding issues he raised. We disagree.

Res judicata, or claim preclusion, bars the relitigation of claims and issues that were litigated, or might have been

litigated, in a prior action, and applies where a prior judgment and a subsequent action are identical as to (1) persons and parties, (2) cause of action, (3) subject matter, and (4) the quality of persons for or against whom the claim is made. *Loveridge v. Fred Meyer, Inc.*, 125 Wn.2d 759, 763, 887 P.2d 898 (1995). Collateral estoppel, or issue preclusion, applies when (1) the issues are identical; (2) the prior adjudication ended with a final judgment on the merits; (3) the party against whom the plea is asserted was a party to the prior adjudication; and (4) application of the doctrine does not work an injustice. *Hanson v. City of Snohomish*, 121 Wn.2d 552, 561-62, 852 P.2d 295 (1993).

Shuman involved the collateral estoppel effect of a district court order in a criminal prosecution on license revocation proceedings by the Department of Licensing. 108 Wn. App. at 675. The Department argued that the trial court record in the criminal case failed to demonstrate that the order in question was the result of a 'fully litigated and contested' hearing, such that collateral estoppel should not apply. *Id.* at 679-80. But this court stated, '{A}lthough the reasons for its decision are not clear from the record, the district court and the parties clearly recognized that the circumstances of Mr. Shuman's breath test were important and necessary to the criminal litigation. No more should be required.' *Id.* at 682. The case was remanded to determine whether the Department was in privity with the prosecuting authority in the criminal case, such that collateral estoppel would apply. *Id.*

Here, the unpublished Ninth Circuit opinions provided by the State and cited in the trial court's order, *Knight v. Serpas*, No. 03-35016, 2003 WL 21418609 (9th Cir. June 18, 2003) (Dist. Ct. No. CV-02-01641-JCC), and *Knight v. City of Mercer Island*, No. 03-35116, 2003 WL 21480340 (9th Cir. June 23, 2003) (Dist. Ct. No. CV-02-00879-RSL), demonstrate that the federal court had jurisdiction to decide,

and actually considered and rejected Knight's constitutional claims on the merits. Knight provides no authority that actually supports his contention that a reviewing court must examine the entire trial and appellate records, including briefs, before applying res judicata or collateral estoppel.

Repeatedly incorporating by reference his briefing below, Knight next claims that RCW 74.20A is (1) an unconstitutional ex post facto law; (2) violates due process and equal protection in violation of the state and federal constitutions; (3) a bill of attainder; (4) a multi-subject bill in violation of the state constitution; and (5) a violation of the federal Anti-Peonage Act. As the State points out and Knight does not dispute, Knight has asserted each of these claims in his prior actions against the State and each one has been addressed on the merits and rejected. Because Knight offers no authority or sensible reason to prevent the application of res judicata and collateral estoppel to bar his admittedly identical claims and issues, we decline to revisit the merits.

Finally, Knight contends that the recent opinion in *City of Redmond v. Moore*, 151 Wn.2d 664, 91 P.3d 875 (2004) constitutes a change in the law preventing preclusion of his due process claim. In *Moore*, our Supreme Court held that two statutes involving driver's license suspension, RCW 46.20.289 and .324(1) violated due process. *Id.* at 669. Knight contends that *Moore* supports his contention that RCW 74.20A is unconstitutional. We rejected this argument in *Amunrud v. Board of Appeals*, Wn. App. , 103 P.3d 257 (2004). Unlike the statutes at issue in Moore, RCW 74.20A provides an opportunity for an administrative hearing, with the right of appeal to the courts, as well as the option to initiate a modification proceeding. *Amunrud*, 103 P.3d at 261. RCW 74.20A does not violate the right to procedural due process. *Id.*

In sum, Knight again fails to demonstrate any invalidity in the State's action in suspending his license.
Affirmed.

WE CONCUR:
Signatures of Judges Faye Kennedy, Marlin Applewick, and Ronald Cox.

The Honorable Richard A. Jones
Trial: Friday, March 19, 2004, 10:15 am.

STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

ROGER W. KNIGHT, Petitioner, v. STATE OF WASHINGTON, and DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Respondent.	)))))))	NO. 03-2-27325-2SEA ORDER AFFIRMING ADMINISTRATIVE DECISION

THIS MATTER came before the Court on the petition of Mr. Roger Knight, pro se, for review of a final administrative decision upholding the suspension of his driver's license based upon his failure to pay child support. DSHS appeared by and through Attorney General, Christine 0. Gregoire and Assistant Attorney General, Lianne S. Malloy. The Court considered the entire administrative record the Board of Appeals filed with the court. This consists of transcripts of the hearing below, administrative exhibits and orders, and legal memoranda. In addition the Court reviewed legal authority submitted to this court relating to the petition and heard argument on the merits. The Court having considered the aforemontioned records and having listened to argument, hereby ORDERS, ADJUDGES and DECREES as follows:

The Court affirms the decision of the Board of Appeals upholding the suspension of Mr. Knight's driver's license. Mr. Knight has not disputed that his license was properly suspended based on state law. Mr. Knight is barred under collateral estoppel and res judicata from challenging

the constitutionality of his license suspension. Issues raised in this court were raised or could have been raised in the Mercer Island and Serpas cases, in the United States District Court, Cause no. C02-1641C; WDW; C02-879L. Furthermore, if this Court were to reach the merits, Mr. Knight has failed to show that the suspension of his license is unconstitutional.

This ruling disposes of all the issues presented in this case and therefore this action is dismissed with prejudice. Each party will bear it owns attorney's fees

DONE IN OPEN COURT on this 19th day of March, 2004.

/s/
JUDGE RICHARD A. JONES

Approved as to form and
Notice of Presentation Waived:
CHRISTINE O. GREGOIRE
Attorney General

/s/
LIANNE S. MALLOY, WSBA 15028
Assistant Attorney General
Department of Social and Health Services

/s/
ROGER W. KNIGHT
Pro Se Plaintiff

BEFORE THE WASHINGTON STATE OFFICE OF ADMINISTRATIVE HEARINGS FOR THE DEPARTMENT OF SOCIAL AND HEALTh SERVICES

In Re:	) Docket No. 03-2003-C-1839
	) D# 586476
ROGER KNIGHT	) FINAL ORDER
	) (Child Support-
Noncustodial Parent.	) License Suspension)

A hearing was conducted by GAIL G. MAURER, Administrative Law Judge (ALJ), at Seattle, Washington, on April 16, 2003. The Noncustodial Parent, Roger Knight, appeared. The Department of Social and Health Services (DSHS), Division of Child Support (DCS) appeared through its representative, Tom Atkinson, Claims Officer.

FINDINGS OF FACT

1. DCS delivered a Notice of Noncompliance and Intent to Suspend Licenses (Notice) to the Noncustodial Parent (Mr. Knight) by personal service on March 11, 2003. In its Notice, DCS claims that Mr. Knight is in noncompliance with a superior court child support order, and that as of December 26, 2002, Mr. Knight owes a past-due child support debt of $66,229.69, an amount that equals at least six months of child support arrears.

2. The child support order was entered in King County Superior Court under Cause No. 9-3-04471-1 July 11, 1991. It ordered Mr. Knight to pay $851.76 per month. The order has not been modified and remains in effect. The last child support payment made by Mr. Knight was October 15, 2001. A total of $5,000.00 was collected by DCS; $851.76 was distributed to current support and $4,148.24 was distributed to the Noncustodial Parent's support debt. No

support has been paid subsequent to October 15, 2001. The total debt as of March 18, 2003 is $69,636.73.

3. Six months of child support at $851.76 totals $5,110.56. Mr. Knight has accumulated a support arrearage totaling more than six months of child support payments.

CONCLUSIONS OF LAW

1. There is jurisdiction to hear this mailer pursuant to Chapter 74.20A Revised Code of Washington (RCW) and Chapter 388-14A Washington Administrative Code (WAC).

2. This noncompliance proceeding is governed by RCW 74.20A.320(3):

> (3) A responsible parent may request an adjudicative proceeding upon service of the notice described in subsection (1) of this section. The request for an adjudicative proceeding must be received by the department within twenty days of service. The request must be in writing and indicate the current mailing address and daytime phone number, if available, of the responsible parent. The proceedings under this subsection shall be conducted In accordance with the requirements of chapter 34.05 RCW. The issues that may be considered at the adjudicative proceeding are limited to whether:
>
> (a) The person named as the responsible parent is the responsible parent;
>
> (b) The responsible parent is required to pay child support under a child support order; and
>
> (c) The responsible parent is in compliance with the order.

The regulatory counterpart is WAC 388-14A-4530:

> (1) An administrative hearing on a notice of noncompliance under WAC 388-14A-4505 is limited to the following issues:

(a) Whether the person named in the child support order is the noncustodial parent (NCP);

(b) Whether the NCP is required to pay child support under a child support order; and

(c) Whether the NCP is at least six months in arrears.

(2) The administrative law judge (ALJ) is not required to calculate the outstanding support debt beyond determining whether the NCP is at least six months in arrears. Any debt calculation shall not be binding on the department or the NCP beyond the determination that there is at least six months of arrears.

(3) If the NCP requests a hearing on the notice, DCS stays the certification process until the hearing results in a finding that the NCP is not in compliance with the order, or that DCS is authorized to certify the NCP.

The administrative hearing is limited by statute and rule to deciding only issues of whether a noncustodial parent is required to pay child support under a child support order and whether the parent is in comphance with that order. Mr. Knight has been ordered by superior court to pay $851.76 per month child support. DCS claims that Mr. Knight is in noncompliance with the order. Noncompliance with a child support order is defined in ROW 74.20A.020(18):

(18) 'Noncompliance with a child support order' for the purposes of the license suspension program authorized under RCW 74.20A.320 means a responsible parent has:

(a) Accumulated arrears totaling more than six months of child support payments;

(b) Failed to make payments pursuant to a written agreementwith the department towards a support

arrearage in an amount that exceeds six months of payments; or

(c) Failed to make payments required by a superior court order or administrative order towards a support arrearage in an amount that exceeds six months of payments.

Mr. Knight's child support arrears as of December 26,2002 was $66,229.69. Six months of child support payments is $5,110.56. Mr. Knight's support arrears are substantially more than six months of support payments and he is in noncompliance with a child support order.

3. Mr. Knight asserts several defenses to application of the noncompliance laws to him:

(1) Inability to pay and fraud. Mr. Knight contends that he should not be subject to the noncompliance and license suspension laws because he was laid off from employment May 29, 1995 and has not had the ability to pay his child support. He states that he cannot enter into any repayment agreement as contemplated in RCW 74.20A.320(5) without committing fraud. According to Mr. Knight, if he knows he cannot pay, signing an agreement to repay would be fraud and a gross misdemeanor defined in ROW 9.45.100. Inability to pay is not a defense to noncompliance. RCW 74.20A.320(3). Mr. Knights concern about signing a repayment agreement under what he would characterize as fraudulent circumstances is without meht. The decision Is his as to whether or not to sign a repayment agreement.

(2) Retroactive application of the noncompliance law. Mr. Knight contends that the noncompliance and license suspension provision of the law operates prospectively and does not apply to his order which was entered in 1991. The noncompliance and license suspension provision was enacted in Session Laws of 1997, Chapter 58, effective July 1, 1997.

The legislature's intent in enacting the law was expressed as follows;

> It is the intent of the legislature to provide a strong incentive for persons owing child support to make timely payments, and to cooperate with the department of social and health services to establish an appropriate schedule for the payment of any arrears. To further ensure that child support obligations are met, sections 801 through 890 of this act establish a program by which certain licenses may be suspended or not renewed if a person is one hundred eighty days or more in arrears on child support payments.
>
> In the Implementation and management of this program, it is the legislature;s intent that the objective of the department of social and health services be to obtain payment in full of arrears, orwtiere that is not possible, to enter into agreements with delinquent obligors to make timely support payments and make reasonable payments towards the arrears. The legislature intends that if the obligor refuses to cooperate in establishing a fair and reasonable payment schedule for arrears or refuses to make timely support payments, the department shall proceed with certification to a licensing entity or the department of licensing that the person is not in compliance with a child support order. [1997 C 58 § 801.1

Although effective July 1, 1997, DCS did not adopt implementing rules until August 11, 1998. These were adopted under WSR 98-17-031 and codified as WAC 388-14-520. The rule has subsequently been recoditied in WAC 388-14A-4500 through 4530. The application of the law would not begin until, at its earliest, September 11, 1998.

4. The noncompliance and license suspension program is remedial in nature. The legislature dearly intended that the threat of license suspension would be a strong incentive to enforcement of timely payments and establishment of a repayment schedule of arrears. Although remedial and retroactive application is indicated, the courts will not apply a remedial statute retroactively if it affects a substantive or vested right. *Miebach w. Cojasurdo,* 102 Wn.2d 170, 181, 685 P.2d 1074 (1984). Suspension or revocation of a driver's license is not penal in nature and it is not intended as punishment. Proceedings to revoke a driver's license are civil, not criminal, in action. *State v. Scheffel,* 82 Wn.2d 872, 514 P.2d 1052 (1973). The noncompliance and license suspension provision does not unjustly or unreasonably impair Mr. Knight's driving privilege. Mr. Knight could avoid its impact by paying support, seek modification and enter into an agreement to pay arrears support. It may be assumed that the law on noncompliance would not apply to those who are already six months or more in arrears at the time the act became effective. Assuming that the law does not apply to arrears accrued prior to July 1, 1997, or the effective date of the rule adoption, September 1 1 1998, Mr. Knight has failed to pay child support in amounts exceeding six months payments since October 15, 2001.

5. Mr. Knight may prevail on his retroactive prohibition argument only if the noncompliance and license suspension law does not apply to any support order entered before July 1, 1997. Such a result would render the legislature's intent a virtual nullity as to existing support obligation. RCW 74.20A.320 applies to Mr. Knighrs child support order.

(3) Mr. Knight raises several arguments regarding the validity of the law and DSHS implementing rules. The ALJ does not have authority to determine the constitutionality of

the statutory law. Only the courts have that power. *Bear v. Gorton,* 84 Wn.2d 380, 526 P.2d 379 (1974). Where the legislature has specifically delegated rule-making authohty to DSHS, the regulations are presumed valid. *Anderson, Leach, & Morse, Inc. Inc. v. State Liquor Control Board,* 89 Wn.2d 688, 695, 75 P.2d 221 (1978). The Noncustodial Parent's challenge to the constitutionality of the law will not and may not be addressed in this administrative proceeding. WAC 388-02-0225. The Noncustodial Parent's argument should be addressed to the court.

ORDER

FINDINGS OF FACT AND CONCLUSIONS OF LAW having been entered herein:

NOW THEREFORE IT IS ORDERED THAT

The Noncustodial Parent is in noncompliance with the Order of Child Support entered July11, 1991 in King County Superior Court Cause No. 9-3-04471-1.

SERVED on the date of mailing.

/s/
GAIL G. MAURER
Administrative Law Judge